

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

MATTHEW SNATCHKO,

Plaintiff and Appellant,

v.

WESTFIELD LLC et al.,

Defendants and Respondents.

C059985

(Super. Ct. No. SCV20641)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is hereby ordered that the opinion filed herein on August 11, 2010, be modified as follows:

On page 31 of the typewritten opinion, insert the following new text preceding the paragraph commencing with "Lastly, Westfield contends it has":

Westfield claims that preventing it from enforcing its Rules would amount to an unconstitutional "taking" under the Fifth Amendment of the United States Constitution. Westfield primarily relies on *Pruneyard, supra*, 447 U.S. 74 [64 L.Ed.2d 741]. Actually, the United States Supreme Court concluded in *Pruneyard* that permitting the exercise of state-protected rights of free expression and petition on shopping center property "clearly does not amount to an unconstitutional infringement of the appellants' property rights under the Takings Clause" since there was nothing

"to suggest that preventing appellants from prohibiting this sort of activity will unreasonably impair the value or use of their property as a shopping center" and the shopping mall could "restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." (*Id.* at p. 83 [64 L.Ed.2d at p. 753].) The United States Supreme Court stated the "appellants have failed to demonstrate that the 'right to exclude others' is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a 'taking.'" (*Id.* at p. 84 [64 L.Ed.2d at p. 754].)

We similarly conclude here that Westfield has not shown that preventing it from enforcing its content-based Rules will "unreasonably" impair the value or use of their property or that the right to preclude strangers from peacefully, consensually talking about matters unrelated to the mall, its tenants or their sponsored activities is so essential to the use of economic value of its property that invalidating the application of the Rules to such activity amounts to a "taking." (*Pruneyard, supra*, 447 U.S. at pp. 83-84 [64 L.Ed.2d at pp. 753-754].) Westfield may still adopt reasonable time, place, and manner regulations that are content neutral. (*Ibid.*) However, as we discuss *post*, Westfield's Rules currently go too far to be considered reasonable time, place, and manner regulations.

With the above modification, the petition for rehearing is denied. This modification does not constitute a change in the judgment. (Cal. Rules of Court, rule 8.264(c)(2).)

BY THE COURT:

ROBIE, Acting P. J.

BUTZ, J.

CANTIL-SAKAUYE, J.